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TOWN ATTORNEY REPORT

DATE: May 30, 2002

FROM: Monroe D. Kiar

RE: Litigation Update



1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out. The Town Attorney's Office confirmed with Mr. Cohen on May 8, 2002, that its negotiations as to the terms of an agreement with URS are still ongoing and that there are still some terms to be worked out. On that date, Mr. Cohen advised that the Town had received considerable documentation which had been provided by the City of Sunrise and that his staff was sorting through the various documents presented to it.
2. **Ordonez, et al v. Town of Davie:** As indicated in earlier reports to the Town Council, this matter went to trial and the jury returned a zero verdict for the Plaintiffs. Mr. Burke filed a Motion to Tax Costs and Attorney's Fees against the Plaintiffs and the Court entered a Judgment in favor of the Town of Davie against the Plaintiffs in the amount of \$6,514.34. Since the Florida League of Cities advanced all costs and attorney's fees in this matter, it will seek to recover upon the Judgment from the Plaintiffs directly. From my discussions with Mr. Burke today, he gave me his assurances that it is his continued belief that the Florida League of Cities will not be seeking reimbursement from the Town for the \$6,514.34 in costs and attorney's fees which it expended in this matter. Rather, the League is seeking to recover said sum from the Plaintiffs (Ordonez).
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final

Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. A copy of the Final Order and Judgment Granting Petition for Common Law Certiorari were forwarded to the Town Council by the Town Attorney's Office along with a letter addressed to the Town Attorney which is a document exempt from public record disclosure pursuant to Florida Statutes §119.07(3)(1), until the conclusion of the referenced litigation. Said document set forth the comments of the Florida League of Cities attorney assigned to the Town, Mr. Michael T. Burke. On April 9, 2002, a Special Executive Session was held by the Davie Town Council with Mr. Burke and the Town Attorney present, and the Town Council gave its direction to Mr. Burke to file an appeal of the Order entered by Judge Cocalis with the 4th District Court of Appeal. On April 17, 2002, Mr. Burke filed a Petition for Writ of Certiorari on behalf of the Town of Davie with the 4th District Court of Appeal. The 4th District Court of Appeal will review the Petition and if the Court finds that the Petition demonstrates a preliminary basis for relief, then the District Court will enter an Order to Show Cause as to why the trial judge's decision should not be quashed and requiring Griffin-Orange North and Seventy-Five East to file a response to the Petition within a time set by the Court. If the 4th DCA concludes that the Petition does not demonstrate a preliminary basis for relief, then it will dismiss the Petition. To date, there has been no Order received from the 4th DCA.

4. **MVP Properties, Inc.:** The Plaintiff previously filed a multi-count lawsuit in the United States District Court for the Southern District of Florida where a Final Summary Judgment in favor of the Town and against Plaintiff, MVP Properties, Inc. was granted by the Court. MVP Properties, Inc. appealed to the 11th Circuit Court of Appeals which later affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. The Town is currently pursuing collection of the Judgment for costs that has been obtained from MVP Properties, Inc. In the meantime, MVP Properties, Inc. has instituted a new lawsuit in which it has filed a Complaint for Inverse Condemnation against the Town of Davie. The Florida League of Cities declined to represent the Town in this latest lawsuit as actions for inverse condemnation are excluded from coverage by the League. Accordingly, the Town Attorney's Office has reviewed the Complaint for Inverse Condemnation filed by MVP Properties, Inc. against the Town of Davie and has timely filed a Motion to Dismiss the Plaintiff's Complaint. Said Motion to Dismiss has been scheduled for hearing for Tuesday, October 29, 2002, at 2:00 P.M. The Town Attorney's Office is confident in the outcome of this litigation.
5. **Town of Davie v. Malka:** The Town Attorney's Office has again spoken with the Chief Building Official, Mr. Craig, who again confirmed that the exterior of the home is complete and that Mr. Malka is continuing to complete of the interior which will consist of a living room addition. Mr. Malka has hired contractors and the interior work is progressing. The building official has indicated that his department continues to keep a close contact with this property owner to insure proper completion of all additions to the structure as promised by Mr. Malka.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer**

Services: As was previously mentioned in earlier Town Attorney Reports, the Governor signed into law during the last session, a Bill allowing the Department of Agriculture and Consumer Services far reaching powers. It permitted the Department to resume cutting all exposed trees within the 1900 foot radius of an infected tree. In March, 2002, representatives from the Department of Agriculture and supporters of the coalition of cities appeared before the Town Council. The Town Council voted 4-1 to join with Broward County in filing a lawsuit to enjoin the Department of Agriculture from initiating the cutting of the uninfected, but exposed trees. A copy of the Complaint filed by the County and the coalition of cities, including Davie, was previously provided to the members of the Town Council by the Town Attorney's Office. The lawsuit sought a stay to prevent the cutting of the exposed, but uninfected trees as permitted under the recently passed Bill. After several weeks of testimony, the trial came to a conclusion. On May 24, 2002, the Town Attorney, along with the attorneys from the other city plaintiffs and from the County, as well as the attorneys for the Department of Agriculture attended the final proceedings in the litigation in a packed courtroom at the Broward County Courthouse. A copy of Judge Fleet's 19 page Order on the Motion for Temporary Injunction was read by him aloud in open court. He concluded that the Florida Legislature when it enacted the 2002 Amendments regarding the Citrus Canker litigation as codified in Florida Statute §581.184 in which the Legislature determined conclusively that any citrus tree located within a radius of 1900 feet of a citrus tree exhibiting visible signs of Citrus Canker had been exposed to infection, and therefore, must be destroyed, was an invalid violation of the constitutional safeguards contained in both the United States Constitution and the State of Florida Constitution. The Judge also challenged the reliability of the scientific investigation conducted by Dr. Gotwald which has come to be known as "The Gotwald Report". The Court criticized the method utilized by those working on the Gotwald Report to measure distances as well as the manner in which the trees are cut, removed from locations and destroyed. The Court also criticized the Department's failure to utilize other means of eradication, such as chemical spraying as suggested by Councilmember Paul at several council meetings. In short, the Judge found the Gotwald Report to be unreliable and the 2002 Legislative Amendments a huge invasion of constitutionally protected rights. The Judge accordingly, ordered that the Department of Agriculture be temporarily enjoined from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. It was made clear at the conclusion of the final hearing that the Department of Agriculture will appeal the Court's ruling.

7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside legal counsel assigned by the Florida League of Cities in this case. Mr. McDuff filed a Motion to Dismiss for Lack of Prosecution which Motion was heard by the Court on May 1, 2002. Despite Mr. McDuff's prior belief that the Court would grant our Motion, the Court

denied same, giving the Plaintiff additional time to move this case forward.

8. **Reinfeld v. Town of Davie, et al:** The parties continue to conduct considerable discovery in this case. As previously reported, Mr. Burke, the League of Cities attorney assigned to defend the Town, has filed a Motion for Summary Judgment in favor of the Town and against Plaintiff, Reinfeld. Previously, the Town Administrator was dismissed as a defendant in this lawsuit and also, as the Council was previously advised, the Motion for Summary Judgment filed by Mr. Weiner was granted by the Court. A mediation session was held on March 7, 2002, but an impasse was reached. This matter was previously scheduled to be tried sometime in May, 2002, but at the request of Ms. Reinfeld's legal counsel, the trial of the action was postponed and this matter is now scheduled to be tried during the two week trial period commencing October 7, 2002. Mr. Burke advises further, that in response to our Motion for Summary Judgment, the Plaintiff, Reinfeld has dropped her claim that she was wrongfully terminated in retaliation for engaging in protected speech or because of her gender. At this date, only two counts, both of which are against the Town of Davie, remain pending. A proposal submitted to Mr. Burke by Mrs. Reinfeld's attorney, Stewart Rosenfeldt, to settle the case was submitted by Mr. Burke to the League of Cities for its consideration.
9. **Spur Road Property:** The Town Attorney's Office spoke with Mr. Burke, our legal outside counsel, on this date. Mr. Burke had previously given a presentation to the Town Council several weeks ago and at that time, advised the Council that the Division of Administrative Hearings had ruled against the Town of Davie's protest to the Department of Transportation's award of the property to the highest bidder, and that a Final Order had been entered by the Department of Transportation adopting the recommendations of the Judge for the Division of Administrative Hearings. Mr. Burke requested that the Council provide him with direction as to how to proceed in this matter and the Council authorized him to take an appeal of the Final Order that was entered the Town. Mr. Burke timely filed a Notice of Appeal. The Clerk of the Department of Transportation is preparing the record for appeal, but has requested and received authorization from the Court for an extension of time in which to compile same. Accordingly, the Appellate Brief which was previously to be filed in June is now not due until July 10, 2002. Mr. Burke's office has begun preparation of their Appellate Brief and upon receipt of the full record from the Department of Transportation, will complete same and file it in a timely manner. In the meantime, the Department of Transportation continues to own the property and has not transferred title to the highest bidder.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The Judge assigned to this case is Judge Charles M. Greene, a well respected Judge of the 17th Judicial Circuit of Broward County. The parties

have conducted considerable discovery, including taking the depositions of the treating physician as well as the doctor hired by the Plaintiff's PIP carrier to conduct an independent medical examination of the Plaintiff. Our outside legal counsel was pleased with the depositions and pleased with the testimony presented by the Board Certified Orthopaedic Surgeon, Dr. Stein, who conducted the independent medical examination for the PIP carrier, which was eventually utilized to terminate the Plaintiff's PIP benefits. Recently, the deposition of Nicole Jones, a 28 year public school teacher for Broward County, was taken in which she testified that after the accident, she spent in excess of ½ hour on the side of the road talking to the Plaintiff, Victoria Saldana, waiting for the police to finish their investigation and during that time, Saldana had never appeared to be injured, nor did she indicate that she was injured. Ms. Jones' testimony, like the other witnesses, was favorable in the area of damages. However, she did testify that her mother did not strike the Saldana vehicle which was immediately in front of her until pushed into it by the police officer's vehicle which struck her in the rear. The deposition of Scott Kushner was also taken. He is employed by Executive Caterers of Hollywood, where Victoria Saldana also works. He testified that he has known the Plaintiff for approximately 2 years and he does not recall Ms. Saldana missing any time from work. He also testified that Ms. Saldana's position as a waitress requires frequent lifting and nearly 7 to 9 hours continuous activity on her feet. He indicated that during the time that he has known Ms. Saldana, he cannot recall any specific instances where she complained of pain of any parts of her body.

11. **Cummings v. Town of Davie:** A Stipulated Final Judgment was submitted to the Court and signed by Judge Streitfeld in this matter on January 17, 2002. Pursuant to the terms of the Stipulated Final Judgment, the Town received from the Cummings a Quit Claim Deed transferring ownership of the disputed sidewalk property to the Town of Davie. The Town Council at its first Council Meeting held in March, 2002, accepted the Quit Claim Deed. The Town has since recorded the Deed and a copy was provided to the Town Attorney, who in turn, transmitted a copy to the attorney for Mr. and Mrs. Cummings pursuant to the Agreement. Accordingly, the Town Attorney's Office will now close its file on this case.
12. **Proposed Sidewalk in Front of Foster Home:** As indicated previously in earlier Litigation Reports, after considerable negotiations, the parties were able to resolve their differences and the Fosters agreed to donate a permanent easement to the Town of Davie for the purposes of constructing the last segment of the sidewalk. The Town will pay all costs related to the conveyance of the permanent easement, including, but not limited to, the preparation of the conveyance documents and the fees charged by the Fosters' engineering expert, Mr. Arnold Ramos, as well as the costs of the legal descriptions of the areas to be conveyed to the Town which were prepared by McLaughlin Engineering, and the attorney's fees incurred by the Fosters relevant to this matter. As indicated, this office was advised by the attorney for the Fosters that the total costs to the Town are within the direct authority of the Administrator. The Town Attorney has visited the subject site on several occasions at no cost to the Town, to view the sidewalk completion work as it has progressed. From a last view of the property, it appears the sidewalk now complete. The

legal descriptions prepared by McLaughlin Engineering were forwarded to the Town Attorney's Office and the Town Attorney's Office prepared a Sidewalk Easement which it has transmitted to the attorneys for Mr. and Mrs. Foster for their execution.

13. **Peter Castagna v. Officers Brito and Williams:** Recently, a lawsuit was instituted by one Peter Castagna against Officers Daniel Brito and Paul Williams alleging an action for damages pursuant to Title 42 U.S.C. 1983, for alleged false imprisonment, battery and intentional infliction of emotional distress. Upon service of same upon the Town, our Risk Manager, Mr. Daniel Lutzke, properly and expeditiously contacted the Florida League of Cities, our insurance carrier. Mr. Lutzke advised the Town Attorney's Office that the Florida League of Cities has agreed that they will defend the police officers in this litigation and will assign legal counsel at the expense of the Florida League of Cities to defend the police officers.